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# Military Uniform Procurement: Questions and Answers

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December 10, 2009

Congressional Research Service

7-5700

[www.crs.gov](http://www.crs.gov)

RS20550

<b>Report Documentation Page</b>			Form Approved OMB No. 0704-0188	
<p>Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.</p>				
1. REPORT DATE <b>10 DEC 2009</b>	2. REPORT TYPE	3. DATES COVERED <b>00-00-2009 to 00-00-2009</b>		
4. TITLE AND SUBTITLE <b>Military Uniform Procurement: Questions and Answers</b>			5a. CONTRACT NUMBER	
			5b. GRANT NUMBER	
			5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)			5d. PROJECT NUMBER	
			5e. TASK NUMBER	
			5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Congressional Research Service, Library of Congress, 101 Independence Ave., SE, Washington, DC, 20540-7500</b>			8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)			10. SPONSOR/MONITOR'S ACRONYM(S)	
			11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>				
13. SUPPLEMENTARY NOTES				
14. ABSTRACT				
15. SUBJECT TERMS				
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>6</b>
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>	19a. NAME OF RESPONSIBLE PERSON	

## **Summary**

Military uniforms are procured through the Defense Logistics Agency (DLA), an agency of the Department of Defense (DOD). DLA is DOD's largest combat support agency, providing worldwide logistics support for the United States (U.S.) military services, civilian agencies, and foreign countries. With headquarters in Fort Belvoir, Virginia, DLA operates three supply centers, one of which is the Defense Supply Center Philadelphia (DSCP), in Philadelphia, PA. DSCP is responsible for procuring nearly all of the food, clothing, and medical supplies used by the military; about 90% of the construction materiel used by troops in the field, as well as repair parts for aircraft, combat vehicles, and other weapons system platforms. DSCP's Clothing and Textile (C&T) Directorate supplies more than 8,000 different items ranging from uniforms to footwear and equipment. According to DSCP's website, DSCP had over \$14.5 billion in sales during 2009.

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**D**SCP's Clothing and Textile Directorate (C&T) supplies more than 8,000 different items ranging from uniforms and body armor to tents and canteens. Many C&T products, such as battle-dress uniforms (BDUs), are unique to the military and the Directorate teams with military service customers and private vendors to design and test them. C&T also identifies, tests, and approves commercial items for military use, such as sweatshirts, gloves, and blankets, and supplies special purpose clothing, wet weather clothing, chemical suits, and field packs.<sup>1</sup>

## How are Military Uniforms Procured?

Military uniforms are procured through competitive contracts. C&T maintains access to a variety of supplies and uniform-related products. Other more specialized products such as body armor, BDUs, and footwear are usually procured directly from contractors. C&T specialists may also procure textiles and materials directly from the textile industry, and then provide them to contractors. The materials may be used to manufacture additional uniforms and related products, often achieving higher quality and substantial savings over purchased, finished generic products.

## Under What Controlling Legal Authority Are Military Uniforms Procured?

Military uniforms are procured in accordance with the provisions of the Berry Amendment and the Buy American Act (BAA).<sup>2</sup> The Berry Amendment, which dates from the eve of World War II, was established for a narrowly defined purpose: to ensure that United States (U.S.) troops wore military uniforms wholly produced in the United States and to ensure that U.S. troops were fed food products wholly produced in the United States. There are exceptions to the Berry Amendment that waive the domestic source restrictions; one such exception allows DOD to purchase specialty metals and chemical warfare protective clothing from countries where the United States has entered into reciprocal procurement memoranda of understanding (MOUs).<sup>3</sup>

The Berry Amendment is now in statute as part of the United States Code, Title 10, Section 2533a. DOD has adopted a final rule to implement Sections 826 and 827 of the FY2004 National Defense Authorization Act. The final rule adds new exceptions to the acquisition of food, specialty metals, and hand or measuring tools when needed to support contingency operations or when the use of other than competitive procedures is based on unusual and compelling urgency.<sup>4</sup> The DOD Federal Acquisition Regulation Supplement (DFARS) 225.7002 has been revised to

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<sup>1</sup> <http://www.dscp.dla.mil/clothingandtextiles/>

<sup>2</sup> The Buy American Act (41 U.S.C. 10a through 10d, as amended ) is the principal domestic preference statute governing most procurement by the federal government. It restricts foreign access to U.S. government procurement by giving preference to domestically produced, manufactured, or home-grown products. For further discussion of the Buy American Act, refer to CRS Report 97-765, *The Buy American Act: Requiring Government Procurements to Come from Domestic Sources*, by John R. Luckey.

<sup>3</sup> For further discussion of the Berry Amendment, refer to CRS Report RL31236, *The Berry Amendment: Requiring Defense Procurement to Come from Domestic Sources*, by Valerie Bailey Grasso.

<sup>4</sup> U.S. Department of Defense. DFARS; Berry Amendment Changes. DFARS Case 2003-D099. Published in the Federal Register, Volume 69, No. 180, September 17, 2004.

include a more nuanced and detailed description of items, components, and materials covered under the provisions of the Berry Amendment.<sup>5</sup>

The Deputy Secretary of Defense memorandum of May 1, 2001, provides that the Under Secretary of Defense for Acquisition, Technology, and Logistics and the secretaries of the military services have the authority to determine that certain items under the Berry Amendment are not available domestically in quantities or qualities that meet military requirements. Such decisions are called domestic nonavailability determinations (DNADS). This authority may not be re-delegated. Use of DNADs require an analysis of the alternatives and certification of the process.

## **How Do Vendors Sell Military Uniforms to the Government?**

C&T has established a 24-hour, 7 day a week Customer Contact Center as the point for all customer inquiries at 1-877-DLA-CALL (1-877-352-2255), or at the customer website <http://ct.dscp.dla.mil/Index.html>. Prospective bidders should obtain specifications prior to submitting an offer. According to the DFARS Parts 204, 212, and 252, contractors must be registered in the Central Contractor Registration (CCR) prior to being awarded either a contract, basic ordering agreement, or blanket purchase agreement, unless the award results from a solicitation issued on or before June 1, 1998.<sup>6</sup>

Vendors and customers may review current solicitations in FedBizOpps, the originating source for all federal government procurement opportunities above \$25,000. Customers may reach the FedBizOpps Help Desk at 1-877-472-3779, or access the website at <http://www.fedbizopps.gov>. Also, DLA has established a new automated system to provide contractors with the ability to conduct detailed searches for solicitations and contract awards, at <http://progate.daps.dla.mil>.

## **Are There New Initiatives Affecting the Procurement of Military Uniforms?**

The complexity and demand for military uniforms, body armor, and other military equipment brought on by the mobilization of troops has contributed to certain legislative initiatives. At the same time, some in Congress are concerned over whether DOD should continue to restrict the import of foreign fibers for use in military uniforms.

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<sup>5</sup> According to the DOD policy on Program Acquisition and International Contracting (PAIC), “Unless a specific exception in law applies, the products, components, or materials listed below must be grown, reprocessed, reused, or produced wholly in the United States if they are purchased with funds made available (not necessarily appropriated) to DOD. These rules apply to both prime contractors and subcontractors. The items listed are food, clothing, tents, tarpaulins, covers, natural fibers or yarns, natural fiber products, natural fabrics, synthetic fabrics, fabric blends, individual equipment (covered in Federal Supply Class 8465) made from or containing fibers, yarns, fabrics, or materials (including all fibers, yarns, fabrics, or materials therein), specialty metals (as defined in DFARS 252.225.7014), stainless steel flatware, hand tools, and measuring tools. Office of the Under Secretary of Defense for Acquisition Technology and Logistics, Defense Procurement and Acquisition Policy, revised January 13, 2005. <http://www.acq.osd.mil/dpap/paic/berryamendment.htm>.

<sup>6</sup> See <http://farsite.hill.af.mil>.

P.L. 110-181 (S. 1548, the FY2008 Defense Authorization Act, Section 829) grants the Secretary of Defense the authority to procure fire-resistant rayon fiber for the production of military uniforms, under certain conditions. This provision was approved for a five-year period and the waiver (or sunset clause) will end in 2013. On July 23, 2009, the Senate voted down S.Amdt. 1525 to S. 1390, the proposed FY2010 Defense Authorization Act, which would have made this Berry Amendment waiver permanent.<sup>7</sup>

P.L. 109-163 (H.R. 1815, the FY2006 Defense Authorization Act) amends the domestic source requirements relating to clothing materials and components in the Berry Amendment. Section 833 requires the Secretary of Defense to notify the public of any contracts awarded which grant exceptions to the Berry Amendment related to clothing materials or components. Specifically, the exceptions are for “materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof)”.<sup>8</sup> The notification is to be posted, within 7 days, on the federal website maintained by the General Services Administration (currently <http://www.FedBizOpps.gov>).

H.R. 4200, the DOD FY2005 Authorization Act (P.L. 108-375) amends Section 806 of the DOD FY2003 Defense Authorization Act (10 U.S.C. 2302 note) by broadening the authority of the Secretary of Defense to develop rapid acquisition procedures to deploy needed equipment for combat emergencies, and to waive any provision, law, policy, directive, or regulation that would unnecessarily impede the acquisition process. The bill grants the Secretary of Defense up to \$100 million in acquisition authority, in any fiscal year, to use any available DOD funds. Any future acquisition initiated under this provision would transfer to the normal acquisition planning cycle within two years.

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<sup>7</sup> Rutherford, Emelie. Uniform Fabric Fracas Signals “Buy America” Concerns in Washington. *Defense Daily*, Vol. 243, No. 44, September 1, 2009.

<sup>8</sup> P.L. 109-163, Section 833.